UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 13

ALLIANCE PRINTERS AND PUBLISHERS, INC.[i] Employer and CHICAGO TYPOGRAPHICAL UNION NO. 16/CWA 14408 Petitioner

Case 13-UC-349

DECISION AND ORDER

Upon a petition duly filed under Section 9(*c*) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board; hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(*b*) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record[ii] in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.[iii]

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.[iv]

3. The Petitioner proposes to clarify the bargaining unit by including employees in the Advertising Department who are engaged in Composing Room work functions, except as limited by Section 36(c) of the current collective bargaining agreement between the Petitioner and the Employer.

4. Clarification of the bargaining unit is not warranted for the reasons set forth below:

The Employer is a corporation engaged in the business of printing and publishing a daily Polish language newspaper in the Chicago metropolitan area. The Petitioner represents employees in a bargaining unit described in the parties' expired collective bargaining agreement as follows:

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[i] The names of the parties appear as amended at the hearing.

[ii] The arguments advanced by the parties at the hearing and in their briefs have been carefully considered.

[iii] The Employer asserts in its brief that the Hearing Officer erroneously excluded evidence of an employee's desire to be excluded from the bargaining unit. However, for the reasons set forth below, I do not reach any weighing of the factors in support of or in opposition to that employee's accretion to the unit. Therefore, even if the Hearing Officer's ruling were in error, that error would not be prejudicial.

[iv] The Employer is an Illinois corporation engaged in the business of newspaper printing and publishing.

> Jurisdiction of the Union and the appropriate unit for collective bargaining is defined as including all composing room work and includes classifications such as: Hand compositors; typesetting machine operators; makeup men; bank men; markup men; lineup and lockup men; stonehands; proof press operators; proofreaders; machinists for typesetting machines; operators and machinists on all devices which cast or compose type, slugs or film; operators of tape perforating machines and recutter units for use in composing or producing type; operators of all phototypesetting machines (such as Fotosetter, Photon, Linofilm, Monophoto, Fotomaster, Protype, Coxhead Liner, Filmotype, Typro, and Hadego); employees engaged in proofing, waxing and paste-makeup with reproduction proofs, processing the product of phototypesetting machines, including development and waxing; paste-makeup of all type, hand-lettered, illustrative border and decorative material constituting a part of the copy; ruling, photoproofing, correction, alteration, and imposition of the paste-makeup serving as the completed copy for the camera used in the platemaking process, and all employees working on any process, machinery or equipment that is a substitute for or evolution of any process machinery or equipment now used to perform any work within the jurisdiction of the Union. Paste-makeup for the camera as used in this paragraph includes all photostats and prints used in offset or letterpress work and includes all photostats and positive proofs of illustrations (such as Velox) where positive proofs can be supplied without sacrifice of quality or duplication of effort. The Employer shall make no other contract covering work as described above, especially no contract using the word "stripping" to cover any of the work above mentioned.

Petitioner filed the instant petition seeking to clarify the bargaining unit to include "all other employees engaged in Composing Room work functions, except as limited by Section 36(c) of the current Collective Bargaining Agreement between the Union and the Publisher". The petition, if granted, would include in the bargaining unit three Advertising Department employees who prepare display advertising. Petitioner claims those employees devote a substantial portion of their time to work falling within the Union's jurisdiction and therefore must be accreted to the existing bargaining unit pursuant to *John P. Scripps Newspaper Corp. d/b/a the Sun*, 329 NLRB No. 74 (1999).

The Employer contends that the petition should be dismissed both because the present case is a work assignment dispute not cognizable through a unit clarification proceeding and because the Union has failed to demonstrate a community of interests among the Composing Room and Advertising Department employees sufficient to justify the latter group's accretion to the bargaining unit. The Employer claims that *Scripps* is not applicable to the present case.

Facts

All of the employees currently represented by the Petitioner in the bargaining unit described above work in the Employer's Composing Room. There are currently eight

employees in the Composing Room. These employees are engaged in the typesetting and make-up of the Employer's daily newspaper. The nature of these tasks has changed dramatically with changes in technology. Instead of mechanically setting hot lead type, employees now use computers to generate images on a monitor screen that are printed onto positive film from which press plates are made.

Before the introduction of the currently used computer equipment, the Composing Room received rough mark-ups of display advertising from the Advertising Department, typically consisting of a sketch of the ad, together with typewritten copy and, sometimes, instructions as to typeface or type size. The Composing Room employees would create the advertisement specified by the mark-up. Now, however, computers used by both Composing Room employees and Advertising Department employees are capable of manipulating images and text on the screen and can directly produce a camera-ready version of the advertisement on film.

The Employer's Advertising Department consists of employees who work on three different types of advertising: classified advertising, which is short and consists entirely of text, classified display advertising, which is classified advertising with some graphic content, and display advertising, which is more graphically rich, can be larger in size, and appears on nearly every page of the newspaper. Three Advertising Department employees currently work primarily on display advertising. They do not sell advertisements, but do work extensively with the newspaper's advertising customers. Some of their work is with advertising agencies, which often provide the newspaper with "camera-ready" advertisements or with computer files that the Employer may print directly onto film, both of which may be directly inserted into the newspaper without any extra work on the ad by the Composing Room.

Other times, display advertising employees work with customers to design advertisements. Since the early 1990s, they have frequently worked on their own computers to design ads by entering both graphics and text, searching for clip art and positioning it in the ad, and closing borders and arranging the ad. They can then print the ads out and give them to the Composing Room for make-up. Some evidence suggests that Advertising Department employees may instead print some of these ads directly to film, bypassing the Composing Room; at the very least they have the capacity to do so. As a result, instead of rough sketches and typewritten copy, the Advertising Department gives the Composing Room either a camera-ready advertisement or at least a precise image of what the end product is to look like. The Advertising Department does not electronically transfer ads to the Composing Room for additional mark-up. Approximately fifty to sixty of the 112½ hours worked each week by these three display advertising employees are occupied with the creation of display advertising.

The Composing Room and Advertising Departments are across the hall from one another. Advertising Department employees are in frequent contact with Composing Room employees in the course of dropping off and picking up advertisements. The two departments are under separate supervision, and there is evidence of only one transfer between the Advertising Department and the Composing Room in the last fifteen years. Advertising Department employees work 5-day, 37½ hour workweeks on one shift with staggered start times; Composing Room employees work 5-day, 32½ hour workweeks on two shifts. Composing Room employees receive training in the use of their equipment

through course work and apprenticeships; similar training is neither required of nor offered to Advertising Department employees.

As it became evident to the parties how the introduction of computers into the facility could potentially impact the work of the bargaining unit, some dispute arose as to the respective duties of the Composing Room and the Advertising Department. The parties attempted to address this dispute in their 1989 collective-bargaining agreement by adding Section 36(c), which provided "that composing room employees shall receive keyboarded raw data … from the Employer's advertising department personnel through the Employer's computer system or, if necessary, in the form of scanner ready copy and tape and shall process such material so received," defining 'processing' as "operating scanners, operating typesetters or other devices used for typesetting, operating mark-up terminals, operating paper and film processors, [and] performing paste make-up."

In 1991, the Petitioner filed a grievance alleging that bargaining unit work was improperly being assigned outside the unit. The Parties pursued the grievance so far as to pick an arbitrator, but then resolved it in 1992 with a settlement agreement in which the Employer agreed to "discontinue the use of non-bargaining unit employees to perform Display and Classified Display work functions covered by the Labor Agreement."

In 1993, the Petitioner filed another grievance claiming that the Employer was violating the Settlement Agreement by failing to transfer the disputed work back to the Composing Room.

In negotiating a new collective-bargaining agreement in 1994, the parties settled the 1993 grievance by inserting new language into Section 36(c). The Employer initially proposed eliminating Section 36(c) and replacing it with language that simply would have granted it total flexibility in assigning display advertising work. The Union rejected this proposal, counter-proposing to include the display advertising employees in the bargaining unit. The Employer eventually proposed instead to modify Section 36(c) to permit the Advertising Department to do up to 120 hours of work otherwise covered by Section 36(c). The parties ultimately compromised with the addition of the following proviso to Section 36(c): "It is further agreed that notwithstanding any other provision of this Agreement, employees outside of the bargaining unit may perform up to one hundred (100) hours of work otherwise covered by Section 36(c) per week. In order for the Union to effectively enforce this provision of the Agreement, the Employer will provide the Union with a weekly record of such hours worked by employees outside of the bargaining unit. These weekly records shall not be construed as adding to, subtracting from, or modifying the Union's jurisdiction under this agreement."

The parties dispute the meaning of this language. The Union contends that Section 36(c) now limits the Employer to assigning 100 hours of raw inputting work to non-unit employees; the Employer contends that Section 36(c) authorizes it to assign up to 100 hours of any unit work on display advertising outside the unit.

The current bargaining agreement, containing the modified Section 36(c), expired on December 31, 1998. The parties have not reached agreement on a new contract, but have agreed to extend the contract on a day-to-day basis with ten days notice required to cancel the contract.

Analysis

Unit clarification proceedings are appropriate to resolve the placement of employees in already-existing job classifications where recent, substantial changes in those employees' duties have created genuine doubt as to whether they can continue to be legitimately included in or excluded from the bargaining unit. *Bethlehem Steel Corp.*, 329 NLRB No. 32 (1999); *Union Electric Co.*, 217 NLRB 666, 667 (1975). "Clarification is not appropriate, however, for upsetting an agreement of a union and employee, even if the agreement was entered into by one of the parties for what it claims to be mistaken reasons…." *Union Electric*, 217 NLRB at 667. Therefore, if a petitioner simply seeks to accrete to the bargaining unit employees that the parties have agreed to exclude, its petition must be dismissed.

In the present case, then, if Section 36(c) of the parties' collective bargaining agreement excludes from the Union's jurisdiction the first 100 hours per week of *all* display advertising work, the parties have effectively agreed to exclude the Advertising Department employees in question from the bargaining unit. I find that Section 36(c) has precisely this effect and, therefore, that the petition must be dismissed.

The Petitioner contends that the 1994 addition to Section 36(c) merely imposed a new 100-hour limit on the raw inputting work that the Section had previously allotted to the Advertising Department. The Employer contends that the added language removed from the definition of unit work up to 100 hours a week of any work on Display Advertising. The Petitioner claims that it has maintained its current interpretation of the language from the beginning; the Employer contends that the Petitioner made clear during bargaining that it interpreted the language in the same way that the Employer does.

The Employer's contentions comport more readily both with the parties' bargaining history and with the most natural reading of Section 36(c) than do the Petitioner's. The clearest, most natural reading of the clause at issue is that the parties intended to remove 100 hours of work from the bargaining unit. The Union contends that only the input of raw data was subject to transfer from the bargaining unit, but the contractual language is not limited in this way.

The bargaining history further supports the Employer's view that the Union ceded jurisdiction over the work at issue. The parties had an ongoing dispute as to whether Advertising Department employees' work on display advertising was simply an evolution of their "mark-up" function and, thus, properly outside the Union's jurisdiction, or instead represented the taking over of the mark-up function from the bargaining unit. The Employer-proposed compromise was the addition to Section 36(c). The parties in the present case clearly did not agree that the display advertising employees were to be included in the unit; the Employer explicitly rejected such a bargaining proposal proffered by the Union. Because Section 36(c) resolves the parties' years-long dispute by excluding up to 100 hours a week of the contested work from the bargaining unit, and because the record shows that there are only three employees in the Advertising Department engaged in the creation of display advertising, each of whom works a 37½ hour work week and has other duties, in addition to performing "unit work," I find that the parties have agreed to exclude those employees from the unit.

If the Union's interpretation of the contract language were correct, it would mean

that the Employer proposed in bargaining to impose a limit on its already existing contractual right to perform textual input. It is implausible that either party understood the employer to be abruptly ending the long dispute over the display advertising work with more than mere acquiescence to the Union's position, retreating further to propose a cap on work that both parties agreed still constituted part of the Advertising Department's "mark-up" function, and then finally agreeing to a cap on mark-up work lower than it had initially proposed. In sum, I find that the parties agreed in essence, in Section 36(c) to exclude Advertising Department employees working on display advertising from the bargaining unit.

The Union contends that, pursuant to the Board's decisions in *Antelope Valley Press,* 311 NLRB 459 (1993) and *Scripps, supra*, that the Board should decide the unit clarification issue even if it finds that the parties agreed to exclude display advertising employees from the bargaining unit. In *Antelope Valley* the Board held that where a bargaining unit, like the unit in the present case, is described in terms of work performed rather than in terms of job classifications, the employer may bargain to impasse over its right to transfer work from the bargaining unit to unrepresented employees, provided it does not attempt to change the scope of the bargaining unit or deprive the union of its right to contend, for instance through a unit clarification proceeding, that the employees performing the transferred work should be included in the unit. *Antelope Valley*, 311 NLRB at 461. The Union effectively claims that *Antelope Valley* holds that the transfer of unit work and the scope of the bargaining unit are always analytically distinct, even where the unit is described functionally. Therefore, the argument goes, by agreeing in the present case to the transfer of unit work, the Union did not automatically also agree to alter the scope of the bargaining unit.

Scripps, following *Antelope Valley*, set forth the standard for unit clarification proceedings involving bargaining units defined by the work performed. But nothing in *Scripps* can be read as overturning the traditional rule in unit clarification proceedings—that adding employees to an existing bargaining unit is only appropriate where there are either newly-created classifications or recent, substantial changes to already-existing classifications. Indeed, when the Board explained in *Scripps* why functionally described bargaining units were subject to a different accretion standard after *Antelope Valley*, it noted that the policy advanced by that decision was to encourage the "practice and procedure of collective bargaining" by requiring adherence to an established bargaining unit "*absent mutual agreement by the parties to change it.*" *Scripps*, 329 NLRB No. 74 sl.op. at 7 (emphasis added). Thus, contrary to the Union's argument, by agreeing to the new clause in Section 36(c) under the circumstances herein, the Union did agree to a change in the scope of the bargaining unit. Stated differently, the parties have collectively bargained to exclude the employees at issue here, and I will not disturb the bargain they reached.

Accordingly, because the parties agreed to exclude the disputed positions from the bargaining unit, a unit clarification proceeding to accrete those positions to the unit is inappropriate, and the instant petition must be dismissed.

ORDER

IT IS HEREBY ORDERED that the petition in the above matter be, and hereby is, dismissed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the **Executive Secretary, Franklin Court Building, 1099-14th Street, N.W., Washington, D.C. 20570.** This request must be received by the Board in Washington by May 3, 2000.

DATED April 19, 2000 at Chicago, Illinois.

/s/Elizabeth Kinney
Regional Director, Region 13

385-7501-2500; 385-7533-4000; 385-7567-6700
420-2300; 420-2305; 420-2340
420-4667; 420-4683; 420-5000